

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * * * *

WILLIE T. SMITH,

Plaintiff,

v.

J. BARNETTE; *et al.*,

Defendants.

3:12-cv-00024-LRH-VPC

ORDER

Before this Court is the Report and Recommendation of U.S. Magistrate Judge Valerie P. Cooke (#17¹) entered on July 19, 2012, recommending that the District Judge enter an order enforcing the settlement agreement and dismissing this action with prejudice. Plaintiff filed his Objection to Magistrate Judge's Report and Recommendation (#27) on November 13, 2012². Defendants have not filed a response to Plaintiff's objections. The action was referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)B and Local Rule 1B 1-4 of the Rules of Practice of the United States District Court for the District of Nevada.

The Court has conducted its *de novo* review in this case, has fully considered Plaintiff's objections, the pleadings and memoranda of the parties and other relevant matters of record pursuant

¹Refers to court's docket number.

²Plaintiff was allowed to file his objections at a later date pursuant to Order # 26, filed October 24, 2012, which re-opened the objection time frame due to a U.S. mail problem.

1 to 28 U.S.C. § 636 (b) (1) (B) and Local Rule IB 3-2. The Court determines that the Magistrate
2 Judge's Report and Recommendation (#17) entered on July 19, 2012, should be adopted and accepted.

3 IT IS THEREFORE ORDERED that the Magistrate Judge's Report and Recommendation (#17)
4 entered on July 19, 2012, is adopted and accepted, and the Settlement Agreement (#13, Exhibit A) is
5 **RATIFIED** as a binding settlement agreement, a copy of which is attached hereto;

6 IT IS FURTHER ORDERED that Defendants shall perform as agreed pursuant to the
7 Settlement Agreement;

8 IT IS FURTHER ORDERED that this case is **DISMISSED with prejudice**; and

9 IT IS FURTHER ORDERED that Defendants' Motion to Enforcement Settlement Agreement
10 (#13) is **GRANTED**.

11 IT IS SO ORDERED.

12 DATED this 25th day of March, 2013.



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14 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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EXHIBIT A

EXHIBIT A

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6 Attorneys for Defendants

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Ely, NV 89301

10 *Pro Se Plaintiff*

11
12 **IN THE UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14 WILLIE T. SMITH,

15 Plaintiff,

16 vs.

17 BARNETT, et al.,

18 Defendants.

Case No. 3:12-cv-00024-LRH-WGC

SETTLEMENT AGREEMENT

19 THIS SETTLEMENT AGREEMENT (hereinafter referred to as the "Agreement") is
20 made and entered into by and among the Nevada Department of Corrections ("NDOC"), on
21 behalf of itself and all of its officers, directors, employees, former employees and agents,
22 including but not limited to, J. Barnett, (hereinafter "NDOC" or "Defendants") and Plaintiff Willie
23 Smith (hereinafter "Smith" or "Plaintiff"), a *pro se* litigant.

24 **RECITALS**

25 A. This Agreement addresses and resolves a dispute arising from and relating to Plaintiff's
26 conditions of confinement during his incarceration in the Nevada Department of Corrections.
27 The dispute concerns alleged Constitutional rights violations relating to Plaintiff's medical
28 care, and allegations of use of excessive force during a certain period of time, as described in

1 Plaintiff's civil rights complaint in Case 3:12-cv-00024-LRH-WGC, currently pending before the
2 United States District Court for the District of Nevada.

3 B. Without making any admission of liability, the NDOC and Plaintiff reached a settlement
4 of their dispute by means of the Early Mediation Conference held in this matter, on May 21,
5 2012. This Agreement memorializes the settlement terms reached by and between the
6 NDOC and Plaintiff. This written Agreement also includes incidental and collateral terms.

7 **AGREEMENT**

8 THE NDOC AND PLAINTIFF HEREBY AGREE AS FOLLOWS:

9 A. **CONSIDERATION, RELEASE AND DISCHARGE**

10 The following legal consideration, release and discharge of claims is hereby exchanged
11 by and among the NDOC and Plaintiff, in support of and in execution of this Agreement, to
12 settle all claims, disputes and controversies arising from and relating to the complaint filed in
13 case 3:12-cv-00024-LRH-WGC.

14 1. The NDOC and Plaintiff hereby agree:

15 i. NDOC agrees to give Plaintiff, within a reasonably practicable time, the
16 following legal consideration: Payment in the amount of ONE HUNDRED
17 DOLLARS (\$100.00), which funds will be deposited into Plaintiff's "Trust-2
18 Account,"¹ from which account the NDOC will not make any assessments or
19 deductions, in the ordinary course of administering Plaintiff's inmate accounts.

20 ii. NDOC agrees to remove all institutional debt accrued to date by Plaintiff,
21 within a reasonably practicable time.

22 iii. NDOC agrees to arrange for Plaintiff to be evaluated, within a reasonably
23 practicable time, by a doctor other than Dr. Koehn. The purposes of this
24 evaluation will include: to evaluate the appropriateness of Plaintiff's current
25 prescription for pain medication, including whether Tylenol would currently be
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27 ¹ Plaintiff's "Trust-2 Account" is an inmate account, from which ordinarily, only Plaintiff may request or
28 authorize deductions, and from which, ordinarily, the NDOC may not deduct funds, without proper authorization
or cause. However, court orders, writs, attachments, garnishments, and other legal process might issue
concerning the account or funds contained therein, in which case, such legal process would permit taking,
deducting, or garnishing amounts from any inmate account, according to law.

appropriate; to evaluate whether Plaintiff currently needs any medication or treatment related to his complaints of symptoms/difficulties with his sinuses; to evaluate whether Plaintiff currently needs any treatment related to bandages or braces for his complaints of symptoms/difficulties with his knee. The parties agree to whatever treatment or non-treatment the evaluating doctor deems medically appropriate.

2. Plaintiff hereby releases and discharges the Defendants of and from any liability relating to the civil rights complaint filed in case 3:12-cv-00024-LRH-WGC. Plaintiff agrees to execute a stipulation for dismissal of this lawsuit with prejudice.

3. Plaintiff agreed to these terms on May 21, 2012, at the Early Mediation Conference held in this matter.

B. WAIVER OF FEES AND COSTS

The NDOC and Plaintiff agree to bear their own attorney's fees and costs arising from or incurred in this litigation.

C. COMPROMISE

The NDOC and Plaintiff agree that this Agreement is a complete compromise of matters involving disputed issues of law and facts relating to the allegation asserted in this litigation. The parties understand and agree that this Agreement is a compromise of a disputed claim. The parties understand and agree that the consideration given by the NDOC in exchange for Plaintiff's consideration of dismissal of all claims against the NDOC asserted in case 3:12-cv-00024-LRH-WGC, as set forth herein, is not to be construed and shall never at any time for any purpose be considered an admission of liability on the part of any party.

D. REPRESENTATION OF COMPREHENSION OF DOCUMENT

In entering this Agreement, the NDOC acknowledges and represents that it has relied on the legal advice of its attorneys, who are the attorneys of their own choice, and that the terms of this Agreement have been completely read and explained to them by their attorneys, and that those terms are fully understood and voluntarily accepted by them. In entering into this agreement Plaintiff acknowledges that he has represented himself as his own attorney in

1 this litigation. Plaintiff acknowledges and represents that he has relied on his own advice, as
 2 his own attorney, and that he has completely read and understood the terms of this
 3 Agreement. Plaintiff further acknowledges and represents that the terms of this Agreement
 4 are fully understood and voluntarily accepted by him, a *pro se* litigant.

5 E. DISMISSAL

6 Plaintiff hereby agrees to execute a *Stipulation and Order for Dismissal*, dismissing with
 7 prejudice all claims asserted against the NDOC and any/all Defendants in this litigation.
 8 Counsel for the NDOC has prepared and circulated the *Stipulation and Order for Dismissal* to
 9 Plaintiff for his review and signature. Upon receiving the signed *Stipulation and Order for*
 10 *Dismissal*, counsel for the NDOC will electronically file the document with the United States
 11 District Court for the District of Nevada.

12 F. GOOD FAITH SETTLEMENT

13 This agreement is entered into in good faith. This Agreement fully settles all claims that
 14 Plaintiff has asserted against Defendants in case 3:12-cv-00024-LRH-WGC.

15 Dated: 6 7, 2012

NEVADA DEPARTMENT OF CORRECTIONS

(on behalf of itself and all of its officers, directors,
 employees, former employees and agents, including
 but not limited to, David Munford)

18 By:

E.K. McDaniel
 E.K. McDaniel

NDOC Deputy Director

20 Dated: _____, 2012.

Willie T. Smith
 Plaintiff, *Pro Se*

23 Dated: June 7, 2012

24 APPROVED AS TO FORM AND CONTENT,
 OFFICE OF THE ATTORNEY GENERAL

25 CATHERINE CORTEZ MASTO
 Nevada Attorney General

27 By:

Nathan Hastings
 Nathan Hastings

Deputy Attorney General
 Attorneys for Defendants